



# **Council on Environmental Quality**

## **National Environmental Policy Act Implementing Regulations**

### **Bipartisan Permitting Reform Implementation Notice of Proposed Rulemaking**

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August/September 2023



# NEPA & CEQ Background

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- NEPA was signed into law in 1970 to promote environmental protection for present and future generations.
- NEPA was amended on June 3, 2023 by the Fiscal Responsibility Act.
- NEPA also established CEQ, which issues regulations to implement NEPA.
  - Federal agencies issue their own agency NEPA procedures, consistent with CEQ's regulations.



# NEPA Regulatory History

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- CEQ issued regulations in 1978, which were largely unchanged for over 40 years.
- July 16, 2020: CEQ issued a rule substantially revising the regulations (known as the “2020 rule”).
- April 20, 2022: CEQ issued a final rule (Phase 1) amending three core provisions of the regulations that had been amended by the 2020 Rule.
- On July 31, 2023: CEQ issued a proposed rule (Phase 2) to make further revisions to its regulations.



# Goals of Proposed Rule

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- Implement the NEPA amendments in the Fiscal Responsibility Act
- Provide an efficient and effective environmental review process that:
  - Promotes better decision making that is efficient and transparent
  - Ensures full and meaningful public engagement
  - Is guided by the fundamental principles of informed and science-based decision making
  - Facilitates improved environmental, climate change, and environmental justice outcomes
  - Promotes regulatory certainty

# Proposed Rule Overview of Changes



# Implementation of the Fiscal Responsibility Act's NEPA Amendments

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- Incorporate a new statutory provision allowing agencies to adopt and use categorical exclusions established in other agency's NEPA procedures. (§ 1501.4)
- Clarify the roles and responsibilities for lead, joint lead, and cooperating agencies to reduce duplication and improve coordination across the Federal Government. (§§ 1501.7, 1501.8)
- Require that agencies prepare a single environmental impact statement and, except where inappropriate or inefficient, issue a joint record of decision. (§ 1501.7)
- Require agencies to prepare a single environmental assessment and issue a joint finding of no significant impact or jointly determine to prepare an environmental impact statement. (§ 1501.7)



# Implementation of the Fiscal Responsibility Act's NEPA Amendments

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- Set 1- and 2-year deadlines for EAs and EISs, respectively. (§ 1501.10)
- Set page limits at 75 pages for an EA and 150 or 300 pages for an EIS depending on complexity. (§§ 1501.5, 1502.7)
- Incorporate new provisions on how a programmatic document can be used in subsequent environmental documents. (§ 1501.11)
- Require an EIS to include analysis of the effects of the no action alternative, including any adverse environmental effects. (§ 1502.16)
- Direct agencies to ensure environmental documents are prepared with professional integrity, including scientific integrity, and make use of reliable data and resources in carrying out responsibilities under NEPA. (§§ 1502.23, 1506.5, 1507.2)



# Implementation of the Fiscal Responsibility Act's NEPA Amendments

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- As a threshold determination, require agencies to assess whether NEPA applies to a proposed activity or decision. (§ 1501.3)
- Clarify the roles of Federal agencies, applicants and contractors in the preparation of NEPA documents. (§ 1506.5)
  - Contractors may prepare an EA or EIS under the supervision of the agency.
  - Agencies must prescribe procedures to allow applicants or project sponsors prepare an EA or EIS. (§ 1507.3)
  - Regardless of preparer, agencies take full responsibility of environmental documents.





# Meaningful Public Engagement & Transparency

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- Update and modernize provisions on public participation to reflect public and governmental engagement, and define the purpose of such engagement. (§§ 1501.9 and 1502.4)
- Prompt agencies to consider the needs of affected communities and persons when evaluating appropriate outreach and notification methods, including considering:
  - The primary language of affected persons; and
  - The appropriate format for public hearings or meetings given the needs of affected communities. (§ 1501.9)



# Meaningful Public Engagement & Transparency

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- Clarify that if an agency publishes a draft EA, it must invite public comment, consistent with longstanding agency practice. (§ 1501.5)
- Require unique identification numbers for EAs and EISs to help the public and agencies track the progress of the environmental review and associated documents. (§§ 1501.5, 1502.4)



# Meaningful Public Engagement & Transparency

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- Require identification of the environmentally preferable alternative in the EIS, rather than only in the record of decision. (§ 1502.14)
- Encourage, rather than require, specificity in public comments. (§ 1503.3)
- Require agencies to designate a Chief Public Engagement Officer responsible for facilitating community engagement across the agency. (§ 1507.2)



# Improve Environmental & Climate Change Outcomes

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- Provide examples of reasonable alternatives that will reduce climate change effects. (§ 1500.2)
- When considering the significance of effects, encourage agencies to consider whether a proposed action has short-term adverse effects but long-term beneficial effects, including climate effects. (§ 1501.3)
- Require the EIS to discuss relevant risk reduction, resiliency, or adaptation measures, and the potential for disproportionate adverse effects. (§ 1502.16)



# Improve Environmental & Climate Change Outcomes

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- Require the EIS to discuss reasonably foreseeable climate change-related effects of the proposed action and its alternatives, including the effects of climate change on the proposed action and alternatives. (§ 1502.16)
- Require monitoring and compliance plans when an agency relies on mitigation as a component of the proposed action to analyze the reasonably foreseeable environmental effects. (§ 1505.3)
- Modernize definitions, such as “effects” and “extraordinary circumstances,” to include climate change. (§ 1508.1)



# Improve Environmental Justice Outcomes & Respect Tribal Sovereignty

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- Provide examples of reasonable alternatives that will reduce or address disproportionate adverse health and environmental effects on communities with environmental justice concerns. (§ 1500.2)
- Note that when agencies assess the significance of potential effects, they should consider disproportionate and adverse effects on communities with environmental justice concerns and adverse effects on rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders. (§ 1501.3)



# Improve Environmental Justice Outcomes & Respect Tribal Sovereignty

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- Affirm the use of Indigenous Knowledge as a source of relevant special expertise for cooperating agencies so agencies can benefit from the unique knowledge Tribal Nations in the environmental review process. (§ 1501.8)
- Modernize definitions to include environmental justice examples, such as in the definitions of “effects,” and “extraordinary circumstances,” and adds a definition for “environmental justice.” (§ 1508.1)
- Exclude from the definition of major Federal action activities or decisions for projects approved by a Tribal Nation where the land is held in trust or restricted status and there is no Federal funding or involvement. (§ 1508.1(u))





# Improve Environmental Justice Outcomes & Respect Tribal Sovereignty

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- Promote adoption of mitigation measures that address or ameliorate significant adverse human health and environmental effects that disproportionately and adversely affect communities with environmental justice concerns. (§ 1505.3)
- Promote meaningful engagement with communities with environmental justice concerns and ensure agencies consider the needs of affected communities when developing outreach and notification methods. (§§ 1500.2, 1501.9)





# Informed & Science-based Decision Making

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- Alternatives Including the Proposed Action (§ 1502.14)
  - Restore text from the 1978 regulations, including alternatives being the “heart of the EIS” and direction to “rigorously explore and objectively” evaluate reasonable alternatives.
  - Require identification of the environmentally preferable alternative in the EIS.
- Emphasize use of high-quality information in discussion of the affected environment to describe reasonably foreseeable environmental trends, along with efficient and concise documents (§ 1502.15)



# Efficient Process & Regulatory Certainty

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- Remove the provisions on exhaustion and remedies (§ 1500.3)
- Restoring and updating the context and intensity considerations in assessing significance of effects. (§ 1501.3)
- Increase predictability by requiring schedules for EISs and EAs with milestones and encouraging coordination among agencies, project sponsors, and applicants. (§ 1501.10)
- Codify best practices for developing programmatic environmental documents and subsequently tiering to an EIS, EA, or programmatic environmental document. (§ 1501.11)



# Efficient Process & Regulatory Certainty

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- Revisions to § 1501.4, Categorical Exclusions (CEs):
  - Clarify definition of CEs and consideration of extraordinary circumstances consistent with defined terms in § 1508.1.
  - Clarify that agencies can establish CEs individually or jointly with other agencies.
  - Provide a new mechanism and flexibilities for agencies to establish CEs through land use plans, decision documents supported by programmatic environmental documents, or other equivalent planning or programmatic decisions.



# Efficient Process & Regulatory Certainty

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- Improve flexibility for interagency coordination and early interagency collaboration and dispute resolution. (§§ 1504.1, 1504.2)
- Amend provisions on adoption of an EIS, EA, or CE for clarity and readability and to ensure agencies conduct independent review of the document they are adopting. (§ 1506.3)
- Add a section on innovative approaches to NEPA reviews to address extreme environmental challenges (§ 1506.12)



# Efficient Process & Regulatory Certainty

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- Agency NEPA Procedures (§ 1507.3)
  - Require agencies to propose updates to their procedures within 12 months.
  - Add more specificity for the process for establishing new or revising existing CEs, consistent with CEQ's 2010 CE guidance.
  - Require agencies to include procedures for reviewing their CEs every 10 years.
  - Allow agencies to include processes for emergency actions not analyzed in an EIS.